Supreme Court, U.S.
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No. 91-1222

In the Supreme Court

OF THE

United States

OCTOBER TERM 1991

CALIFORNIA ELECTRIC COMPANY,
A California Corporation,
Petitioner,

VS.

PATRICK BRILEY; MANUEL CADENA; JOHN DION; LELAND KNISLEY; JOSE MUNOZ; ROBERT PAZ; RAYMOND TABEK; JOHN WHELPLEY,
Respondents.

REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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March 16, 1992

QUESTIONS PRESENTED

Does federal labor law preempt a state tort action against an individual union employee based on a violation of state law which sets forth general standards of conduct applicable to all employees under state law?

Does federal labor law completely immunize individual union employees from liability for actions and omissions which were stipulated to have been purely personal, unconcerted and not protected by § 7 of the National Labor Relations Act, 29 U.S.C. § 157?

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I

INTRODUCTION

In accordance with Rule 15.6, Rules of the Supreme Court of the United States, Petitioner California Electric Company, a California corporation ("Petitioner"), hereby submits its reply to arguments first raised in Respondents' opposition brief. In their opposition brief, Respondents proffer several irrelevant arguments, both factual and legal, in an apparent attempt to divert the Court's attention from the stipulated, and, indeed, conclusive fact that the actions of the individual

Respondents in quitting their employment with Petitioner were personal and not concerted activity. Thus, neither § 7 nor § 301 (nor presumably § 303) of the National Labor Relations Act, as amended, 29 U.S.C. § 151, et seq., operates to preempt or immunize the employees from individual state tort liability for their actions and omissions.

II

ARGUMENT

A. Respondents Improperly Rely On "Facts" Not Part Of The Record Below.

As a threshold matter, Respondents improperly make reference to, and include as Appendix A to their opposition, portions of the collective bargaining agreement between Petitioner and International Brotherhood of Electrical Workers, Local Union No. 234 (Respondents' Opp. Brf., p. 2). The collective bargaining agreement between Petitioner and IBEW Local 234 is not properly part of the record below, and any reference thereto should, therefore, be ignored by the Court.

Moreover, even if it were properly a part of the record below, that agreement is irrelevant to the present action because Petitioner has made no claim that the individual employees breached the collective bargaining agreement between it and IBEW Local 234 in quitting their employment for purely personal reasons. Indeed, the only contract with which Respondents' stipulated individual conduct interfered was the "time and

materials" contract between Petitioner and Basic American Foods, Inc., and not any collective bargaining agreement.

Similarly, Respondents' fact statement claims that Respondents quit their employment with Petitioner in the context of a long-standing dispute over job assignments between IBEW Local 234 members and electricians employed directly by Basic and who were represented by the International Brotherhood of Teamsters. Not only are these "facts" not part of the record below, they directly contradict the solemn stipulation of each Respondent that his individual quit was for purely personal reasons and that no employee intended his quitting to be "concerted activity" pursuant to § 7 of the NLRA. In these circumstances, Petitioner urges the Court to ignore Respondents' spurious attempt to improperly introduce facts which are not part of the record below, and, further, which are irrelevant in light of the parties stipulation.

B. The Scope Of California Labor Code §§ 2854 and 2865 Is Not Limited To At-Will Employees.

Respondents also attempt to bootstrap their opposition by making the legal argument that the state statutes at issue herein apply only to cases of at-will employment and are thus superseded by the collective bargaining agreement between Petitioner and IBEW Local 234. Not only are Respondents' arguments legally flawed but Petitioner in no manner relied upon

California Labor Code § 2922 in support of the questions presented in the instant Petition.

Petitioner does not in any way dispute that California Labor Code § 2922 relates to the concept of at-will employment; however, neither California Labor Code § 2854 nor § 2865 makes any mention of or reference to California Labor Code § 2922 or the concept of at-will employment. Quite to the contrary, the above-referenced statutes explicitly incorporate their application to include all "employees for consideration." Id. Accordingly, Respondents' wholly unsupported interpretation that California Labor Code §§ 2854 and 2865 apply only to at-will employees should be rejected by this Court.

Indeed, if one follows Respondents' argument through to its "logical" conclusion, the entire California Labor Code would have to be found to apply to at-will employees only. Thus, for example, only at-will employees in California would be permitted to take advantage of the state's workers' compensation benefits scheme. Cal. Lab. Code § 3600, et seq. Such a finding would, of course, be absurd. The statutorily mandated duties set forth in §§ 2854 and 2865 are clearly applicable to all employees in the state of California regardless of the nature of the employer/employee relationship. Accordingly, this sophistic argument should be rejected by the Court.

III

CONCLUSION

For each and all of the above and foregoing reasons, and for the reasons set forth in California Electric Company's Petition for Writ of Certiorari, Petitioner respectfully moves this Court to grant the Petition for Writ of Certiorari, summarily vacate the decision of the Ninth Circuit, and remand the matter to the District Court for a determination on the merits.

Alternatively, Petitioner respectfully moves this Court to grant the Petition and give the plenary consideration.

DATED: March 16, 1992.

Respectfully submitted,

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